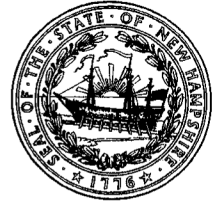




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

April 5, 2005

Potanipo Garage, Inc.  
Attn: George Farwell  
c/o 37 Mason Road  
Brookline, NH 03033

Re: Docket No. AF 04-073 – Potanipo Garage, Inc.

Dear Mr. Farwell:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on April 5, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**  
Michael P. Sclafani,  
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
James Martin, DES Public Information Officer  
Tammy Calligandes, DES WMD

Potanipo Garage, Inc.  
Attn: George Farwell  
C/o 37 Mason Road  
Brookline, NH 03033

ADMINISTRATIVE FINE  
No. AF 04-073

RE: Potanipo Garage, 102 Route 13,  
Brookline, NH UST ID# 0-111443

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Potanipo Garage Inc., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.

2. Potanipo Garage, Inc. ("Potanipo"), is the registered facility owner of two underground storage tank ("UST") systems at the Potanipo facility ("the Facility"), further identified as UST # 0-111443, located on real property at 102 Route 13 in Brookline, NH ("the Property").

3. On September 9, 2004 the Division issued Notice of Proposed Administrative Fine No. AF 04-073 ("the Notice") to Potanipo seeking fines totaling \$2,000 for violations of failing to perform the annual test for the line leak detectors on the two USTs at the Facility. For this violation, Env-C 607.03 (i) specifies a fine of \$1,000 per system per requirement not met or \$2,000 for the Facility.

4. Specifically, the Notice cited Potanipo for violating Env-Wm 1401.30(b) by not performing an annual test for the two line leak detectors at the facility. Pursuant to RSA 146-C: 9, the Division sought a fine of \$2,000.

5. In order to settle this matter, the Division and Potanipo have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

6. Of the proposed \$2,000 fine for failure to perform annual line leak detector test 20% or \$400 shall be suspended for returning the facility to compliance. An additional 20% or \$400 shall be suspended due to the respondent's good faith effort to comply with the applicable environmental laws. An additional 20% or \$400 shall be suspended due to the small business status of this facility.

7. The suspended portion of the proposed fine is contingent upon Potanipo maintaining compliance with Env-Wm 1401, at this facility, for a period of two years. Failure to maintain compliance shall require the suspended portion of the proposed fine to become due and payable immediately. Upon successful completion of the two year period, the suspended portion of the fine shall be waived.

8. Potanipo agrees to pay the remaining \$800 upon execution of this Agreement by an authorized agent of Potanipo.

9. Payment under Paragraph #8 and any payment that becomes due pursuant to Paragraph #7 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

10. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, Department of Environmental Services (DES) may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

11. By executing this Agreement, Potanipo waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.


12. The effective date of this Agreement will be upon signature by an authorized representative of Potanipo, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

13. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,  
Potanipo Garage, Inc.

March 31, 2005  
Date

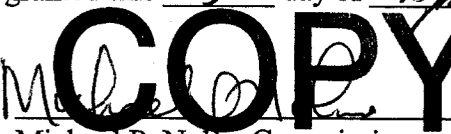
  
By: George Farwell  
Duly Authorized

DES Waste Management Division

4/1/05  
Date

  
Anthony Givata, Director

This Motion to Accept Settlement agreement is granted this 5<sup>th</sup> day of April, 2005.

  
Michael P. Nolin, Commissioner  
Department of Environmental Services